

Supreme Court, U.S.
FILED

No. 05-569 OCT 19 2005

OFFICE OF THE CLERK

In The

Supreme Court of the United States

JAY ROTHHAUPT,

Petitioner,

v.

CHARLIE MAIDEN, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

GARRY R. ADAMS
CLAY, KENEALY, WAGNER & ADAMS, PLLC
Meidinger Tower, Suite 1730
462 S. Fourth Avenue
Louisville, KY 40202
(502) 561-2005

Counsel for Petitioner

QUESTION PRESENTED

Whether the Sixth Circuit's Opinion fails to protect important constitutional guarantees of freedom from unreasonable searches and seizures in the aftermath of September 11 and the well-intentioned extension of police authority under the Patriot Act.

PARTIES TO THE PROCEEDING

Jay Rothaupt, as Petitioner, Charlie Maiden, Carroll County Sheriff and, Ron Dickow, Deputy Carroll County Sheriff, in their individual and official capacities for the Sheriff's office, and Seldon Scott, individually and as Special Deputy Director of Public Safety for Carroll County, and Phyllis Scott, individually.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION.....	7
I. This Court Must Review the Sixth Circuit's Failure to Protect Innocent Citizens from Unreasonable Searches. The Search of Petitioner's Vehicle During the Initial Stop Went Beyond that Permissible Under Terry	10
II. The Detention of Petitioner During the Search Was Illegal.....	13
III. The Seizure and Theft of Petitioner's Property Amounts to Unlawful Deprivation of Property	14
IV. Scott is Liable to Petitioner under Section 1983 Because He Was Acting Under Color of State Law	16
CONCLUSION.....	18
APPENDIX.....	App. 1

TABLE OF AUTHORITIES

	Page
CASES	
<i>Arizona v. Hicks</i> , 480 U.S. 321 (1987).....	11
<i>Bennett v. City of Eastpointe</i> , 410 F.3d 810 (6th Cir. 2005)	14, 15
<i>Chapman v. The Higbee Co.</i> , 319 F.3d 825 (6th Cir. 2003)	17
<i>Farm Labor Org. Comm. v. Ohio State Highway Patrol</i> , 308 F.3d 523 (6th Cir. 2002).....	15
<i>Feathers v. Aey</i> , 319 F.3d 843 (6th Cir. 2003)	9, 12
<i>Henderson v. Fisher</i> , 631 F.2d 1115 (3d Cir. 1980)	17
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983).....	10, 11
<i>Minnesota v. Dickerson</i> , 508 U.S. 366 (1993).....	10, 11
<i>Payton v. Rush-Presbyterian-St. Luke's Med. Ctr.</i> , 184 F.3d 623 (7th Cir. 1999)	17
<i>Pennsylvania v. Mimms</i> , 434 U.S. 106 (1977)	13, 14
<i>Radvansky v. City of Olmsted Falls</i> , 395 F.3d 291 (6th Cir. 2005).....	9, 12
<i>Rojas v. Alexander's Dept. Store, Inc.</i> , 654 F. Supp. 856 (E.D.N.Y. 1986)	17
<i>Romanski v. Detroit Entertainment, L.L.C.</i> , 265 F. Supp. 2d 835 (E.D. Mich. 2003).....	16, 17
<i>Sample v. Bailey</i> , 409 F.3d 689 (6th Cir. 2005).....	16
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968)	<i>passim</i>
<i>Texas v. Brown</i> , 460 U.S. 730 (1983).....	11
<i>Thompson v. Louisiana</i> , 469 U.S. 17 (1984)	8
<i>Toms v. Taft</i> , 338 F.3d 519 (6th Cir. 2003)	9

TABLE OF AUTHORITIES – Continued

	Page
<i>United States v. Ferguson</i> , 8 F.3d 385 (6th Cir. 1993)	11, 12, 13
<i>United States v. Mesa</i> , 62 F.3d 159 (6th Cir. 1995).....	12
<i>United States v. Place</i> , 462 U.S. 696 (1983).....	15
 CONSTITUTION	
U.S. Const. amend. IV.....	2, 8, 13, 15
 STATUTES	
42 U.S.C. § 1983	2, 8, 16
 RULE	
Supreme Court Rule 10.....	2

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Kentucky granted summary judgment to Defendants on all federal and state law claims arising out of the wrongful arrest of Petitioner.

The order of the United States Court of Appeals for the Sixth Circuit affirmed the judgment of the United States District Court for the Eastern District of Kentucky except to the extent it reversed and remanded the District Court's grant of qualified immunity to Respondent Dickow with respect to the arrest. The claim of unlawful arrest against Dickow was remanded for further proceedings and is not before this Court on Petition. The claims against Maiden, the Scotts, and Dickow arising under federal constitutional law and state statute as a result of the search of Petitioner's car, as well as his deprivation of property and freedom, are before this Court. (No. 04-5868, 6th Cir. Opinion.)

JURISDICTION

The judgment of the district court was entered on June 21, 2004. A timely notice of appeal to the United States Court of Appeals for the Sixth Circuit was filed on July 20, 2004. The judgment of the Sixth Circuit was entered on July 20, 2005. Jurisdiction is proper over this writ pursuant to 28 U.S.C. § 1254(1) because it is an appeal from a final decision of the United States Court of Appeals and is filed within 90 days of the Court of Appeals entry of Order.

This petition is filed under this Court's Rule 10 seeking a ~~retentionary~~ review of the Sixth Circuit's Opinion which infringes upon individual freedom against unreasonable searches and seizures.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourth Amendment to the Constitution of the United States guarantees "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." U.S. Const. amend. IV.

42 U.S.C. § 1983 provides: "Every person who, under color of any statute . . . subjects or causes to be subjected any citizen. . . . To the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law . . ."

STATEMENT OF THE CASE

The advent of the internet has changed the way American citizens interact with one another and more importantly changed how they conduct business with each other. This case arose from a dispute over a commercial transaction on eBay. The newness of this technology and cyber marketplace created the initial incident out of which this whole scenario derived. The ultimate lack of governance or agreeable dispute resolution processes created the situation at bar because the Seller decided to retaliate against a Buyer who simply tried to return a product in person and collect the refund.

Petitioner was employed at Overlook Systems Technologies, Inc. as a staff engineer, working on projects for Lockheed Martin with top-level security clearance. Petitioner is a trained aeronautical and astronautical engineer, received his education and subsequently taught at the Air Force Academy. Petitioner is a trained aeronautical and astronautical engineer and is also a collector, as a hobby. As part of his hobby, he participates in auctions on eBay, an online auction website. (Apx. p. 2). On or about July 14, 2001, Petitioner was the winning bidder on eBay of four Pfaltzgraff Tumblers, with a bid of \$59.00 plus shipping charges of \$7.70 from Seldon and Phyllis Scott, doing business as Hilltop Collectibles. (Apx. pp. 2, 19).

When Petitioner received the tumblers, he examined the product and realized the tumblers did not conform to the auction description. In fact, the tumblers contained several flaws. (Apx. p. 2). Petitioner then contacted Phyllis and Seldon Scott, by email, to outline with specificity the flaws in the tumblers and his unhappiness with the items. Petitioner and Respondents exchanged several e-mails to one another in an attempt to resolve the dispute. Ultimately, Respondents cut off communication with Petitioner and left the issue unresolved. (Apx. pp. 2, 20).

Prior to the incident in question, Petitioner was visiting his mother in Pennsylvania where he was getting some target practice for an upcoming elk hunt he had been asked to participate in back in Colorado. (Apx. pp. 2, 21). As he was traveling back to Colorado, on or about September 21, 2002, Petitioner drove through Kentucky in order to hand-deliver the goods in question back to the Scotts. (Apx. pp. 2-21).

Before going to the Scotts' residence, Petitioner telephoned and informed them he had a package for them. Mrs. Scott answered the phone and did not ask Petitioner to identify himself. (Apx. pp. 3, 22). Petitioner headed toward the Scotts' residence with the sole purpose of returning the nonconforming goods once he confirmed somebody was home. (Apx. pp. 3, 22).

At the Scotts' residence, Petitioner stated he had an eBay return from Jay Rothhaupt to be paid with COD of \$100.00. (Apx. p. 141). After Mr. Scott stated his refusal to pay for the goods, he became angry and demanded to know who Plaintiff "was with." (Apx. pp. 3, 22). Mr. Scott identified himself as a law enforcement officer and told Petitioner to, "stay right there." In the District Court Criminal trial, Defendant Seldon Scott admitted he told Petitioner he was a law enforcement officer. (Apx. p. 22). Mr. Scott then informed Petitioner he was refusing shipment, and had Mrs. Scott "call the police." Petitioner confirmed that Scott was refusing the package and left the residence. Petitioner was never asked to leave the residence by either Seldon or Phyllis Scott. (Apx. pp. 3, 22-23). As Petitioner was leaving the residence, Seldon Scott followed him reciting Petitioner's license plate number. Scott then turned around and went back inside his house. (Apx. pp. 22-23).

Petitioner then attempted to continue on his trip back to Colorado. (Apx. pp. 3, 22). While driving away, Petitioner noticed Scott was following him. Moments later, Petitioner was pulled over by Officer Dickow. Scott pulled in immediately behind them after the stop. (Apx. pp. 4, 23). Dickow requested to see Petitioner's driver's license and registration, and asked about Petitioner's travel plans. (Apx. pp. 4, 23). Dickow informed Petitioner he was

responding to a trespassing complaint. Petitioner responded he had written permission to be on the property. (Apx. pp. 4, 23). Scott stated he had told Petitioner to leave his property. Scott had actually told Petitioner to "stay right there." (Apx. p. 13).

Respondent Dickow then asked for permission to obtain the tumblers from the back seat of the car. Petitioner denied Dickow permission to enter his car. (Apx. pp. 4, 23). Dickow then yelled at Petitioner to exit the car; Petitioner complied immediately. (Apx. pp. 4, 23). Dickow then ordered Petitioner to turn around and place his hands on the roof of the car, and Petitioner complied. (Apx. p. 23). Dickow patted Petitioner down, and, finding nothing, ordered Petitioner to turn around and began to interrogate him. (Apx. p. 23).

At some point during the questioning, Respondent Dickow asked if Petitioner had any firearms or illegal drugs in the car. Petitioner replied he was carrying a rifle and explained his reason for having the rifle. (Apx. p. 23) Dickow then asked Petitioner to stand behind the back of the car, un-handcuffed while Dickow and Scott had a discussion Petitioner could not hear. (Apx. p. 23) Several minutes later, Dickow placed handcuffs on Petitioner, asked him again if he had ever been arrested, to which Petitioner again replied no and asked where the rifle was. (Apx. p. 23). Petitioner told Dickow the rifle was in the foot well of the rear seat. (Apx. p. 23). Dickow then placed Petitioner in the rear of his police cruiser. (Apx. p. 23).

Petitioner was seated in the back of the cruiser and could see Dickow and Scott enter his car. The rifle case in the back seat of Petitioner's car was covered by a blanket and possibly some clothing, which Dickow removed. He

then began to search through the rifle case. (Apx. pp. 23, 24). In the meantime, Scott was also searching Petitioner's car and removed the box which contained the tumblers. (Apx. pp. 4, 24).

Eventually, another officer, Deputy Mefford, arrived at the scene. (Apx. pp. 4, 24). Deputy Mefford then also began searching Petitioner's car. (Apx. pp. 4, 24). Scott and Deputy Mefford then approached Petitioner and began to ask him some more questions. Scott identified Petitioner as "the guy I told you about at the station who's been doing this stuff to eBayers and threatened me with fraud." (Apx. p. 4). Petitioner replied he had not threatened Scott with fraud but had printed out a fraud report for the postal service.

At that point, Respondents Scott and Dickow and Deputy Mefford began searching through Petitioner's personal papers that were in his vehicle. (Apx. p. 24). Dickow then got into the cruiser with Petitioner and informed him he was "under arrest." Petitioner was taken to the Carroll County Detention Center where he was forced to stay overnight. (Apx. pp. 5, 24).

After the Petitioner posted the \$15,000.00 bond for his release and was attempting to reclaim his vehicle and possessions, he was stopped by Dickow and informed there was a problem with his car. (Apx. p. 25). Dickow told Petitioner the problem was that "drugs" had been found in his car. The "drugs" found in Petitioner's car were: caffeine tablets, aspirin and Ibuprofen. (Apx. p. 25). Petitioner had a prescription for the Ibuprofen. Petitioner was again "arrested and charged" and placed in jail by Dickow for approximately 10-20 minutes. (Apx. p. 5). The prescription-drug charges were dropped. (Apx. p. 6).